IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 2886 of 2006

Dated: 23rd February, 2007

Between:

G.Venkata Ratnam .. Petitioner

And

The Government of Andhra Pradesh rep.
by its Secretary, Tourism Department,
Secretariat, Hyderabad .. Respondents

JUDGMENT : (per Hon'ble JC,J)

The petitioner, who is a Technical Assistant in the Department of Archaeology and Museums, Government of Andhra Pradesh, who was unsuccessful before the Andhra Pradesh Administrative Tribunal, Hyderabad (for short "the Tribunal"), is questioning the orders of the 2nd respondent in Rc. No. A4/1332/2005-1, dated 29.6.2005, transferring and posting him in the office of the Assistant Director (Technical), Archaeology and Museums, Kakinada from Hyderabad where he was working as Technical Assistant in the Office of the 2nd respondent.

The petitioner was appointed as Assistant in Epigraphy in the office of the 2nd respondent on 28.2.1985. He is holding the following degrees.

(i) Sahitya Shiromani from Sri Venkateswara University
(ii) M.A. in Sanskrit from Andhra University
(iii) M.A. in Archaeology from Osmania University
(iv) B.Ed. in Sanskrit from Kendriya Sanskrit Vidya Peeta, Tirupati

It appears that at the time of his joining the Department, he was holding Sahitya Shiromani (Sanskrit) Degree and the other degrees above stated were acquired by him after joining the service. Though the petitioner alleges that he was transferred

and posted at Keesaragutta Museum, Ranga Reddy District, the stand of the respondents, which was upheld by the Tribunal, is that the Site Museum at Keesaragutta, which is 35 kms from Hyderabad has no sanctioned post of Assistant in Epigraphy and he was temporarily deputed to work there from the office of the 2nd respondent and he was in fact drawing his salaries from the head office at Hyderabad. Admittedly, he worked at Keesaragutta for one month only and thereafter he began to work in the office of the 2nd respondent. While so, by the proceedings of the 2nd respondent, dated 29.6.2005, he was transferred and posted at the office of the Assistant Director (Technical), Archaeology and Museums, Kakinada in the existing vacancy on administrative grounds. The order states that he is deemed to have been relieved from his duties of Technical Assistant with effect from 30.6.2005 afternoon. Against the said orders, he filed an appeal before the Government of Andhra Pradesh and also an application in OA No. 3050 of 2005 on the file of the Tribunal. The said OA was disposed of on 4.7.2005 with a direction to the Government to dispose of the appeal not later than four weeks from the date of receipt of the order so as to enable the applicant for obtaining necessary relief from the appellate authority i.e., the Government of Andhra Pradesh, *status quo* was ordered to be maintained for a period of two weeks. The Government of Andhra Pradesh by order dated 3.8.2005 dismissed the appeal. The petitioner carried the matter to the Tribunal in OA No. 4048 of 2005 and the Tribunal dismissed the same on 27.12.2005. Hence, the present writ petition.

The Tribunal disposed of the OA principally on the ground “All said and done, it is a case of mere transfer in the course of administration.” The case of the petitioner that it is not a mere transfer in the course of administration, but something more.

The petitioner as it appears from the pleadings is a highly qualified man. The confidence with which he made an assertion in the affidavit dated 13.3.2006 to the effect that “if any other employee has my skill, knowledge, expertise and experience I forego my job” makes this Court examine this matter in depth and not treat the impugned order as a mere order of transfer in the course of administration. We are conscious of the fact that transfer is an incidence of service under the State. Case law on the subject points out two factors which provide the theoretical foundation for the concept viz., (1) the continuance of an employee of a

State at one particular place for a longer time is likely to create undesirable consequences like creation of vested interests and misuse or abuse of the power which comes with the employment under the State, which enables those employees to preside over the destinies of the people. Lord Acton pointed out "all power corrupts and absolute power corrupts absolutely." Absoluteness has various dimensions. One of them is the magnitude, the second - the span of time over which a person is permitted to exercise the power, however, limited the magnitude of the power is. (2) The exigencies of the administration require the service of a particular person at a particular place.

The modern welfare state has taken on its shoulders innumerable activities which were not traditionally part of the activities of the State. The activity of the preservation of historical monuments or documents is one such. It is a sad fact that we Indians have never been very enthusiastic about such preservation. The Department of Archeology and Monuments both at the National level and at the State level unfortunately do no better a job.

When the British captured the Red Fort in 1857, they pulled down the gorgeous harem apartments, and in their place erected a line of barracks in an act of wanton philistinism. A celebrated author William Dalrymjple (a White Man) laments in his book titled "The Last Mughal – The fall of a dynasty, Delhi – 1857", "The barracks should of course have been torn down years ago, but the Fort's current proprietors, the Archaeological Survey of India, have lovingly continued the work of decay initiated by the British…". A certificate "Glorious" enough for those who are responsible for the administration and policy making of these departments. The plight of the ancient monuments or archaeological sites in the State of Andhra Pradesh is no better.

The fact remains that those who are working in these departments do not yield any power to preside over the destinies of the current generation. They only have an opportunity if permitted by a "policy" and those who are responsible for framing of the "policy" to dig the past and deal with the dry bones of history. A very miserable chance of getting corrupted in the material sense - Treasure Hunters and Buccaneers excepted.

Therefore, while effecting the transfers of personnel in the departments like the one in question, the traditional norm that a person should not be permitted to continue at the same place in a government service for a long time

in our view is not a very relevant norm, though it's a very relevant norm in the context of those who are concerned with the administration of revenues, maintenance of law and order as they wield more crude power and have greater opportunity of developing vested interests. The only considerations in our view in making transfers in the departments like the Department of Archeaology should be the ability to perform a particular job and the need (to be assessed on a rationale basis) to post the employee to a particular station.

The petitioner asserted in his affidavit dated 13.3.2006 that he has expertise in deciphering early Rock and Stone and Copper Plates inscriptions in Brahmi, early Telugu and Kannada, Nagari, Tamil and Tamil Grandha. He further asserted that other than the petitioner that no other employee in the entire Archaeology Department with the expertise, knowledge or experience in these matters and that his services are required more at the head office. The 2nd respondent in her counter affidavit dated 5.2.2006 while admitting the assertion of the petitioner that he has a Masters Degree both in Sanskrit and Archaeology observes that such qualifications were acquired without prior permission of the competent authority as per the rules in vogue which allegation was promptly denied at para 2 of the reply affidavit dated 13.3.2006 filed by the petitioner. The 2nd respondent states in her counter affidavit dated 5.2.2006 that there is a Research Institute at Kakinada having 6500 palm leaf manuscripts in Telugu and Sanskrit languages whereas Andhra Pradesh State Museum at Hyderabad possess 850 manuscripts most of which are in Urdu, Arabic, Persian and Nagari. The 2nd respondent Annexed to the additional counter affidavit filed by her dated 23.3.2006 an elaborate description of the title of the various manuscripts which are available at the above mentioned institute at Kakinada in order to justify her decision to transfer the petitioner to Kakinada. She is conspicuously silent about the nature of the work that is required to be carried at the State Museum at Hyderabad and also whether there is any other person who is qualified to carry on the said work.

We were cautioned at the Bar by the learned Government Pleader that it is beyond the permissible limits of the jurisdiction of this Court to examine these questions as we are believed are expected to be absolutely illiterate in these areas and only the Secretaries of the State who belong to the exalted Indian Administrative Service who can possess such extraordinary knowledge and skills

of everything that concerns the administration of the State. We assure the respondents we do not propose to indulge in any such exercise, but we are certainly entitled in law to examine whether the decision making process was a rational one or not. Fortunately, the Indian Constitution still authorizes us to examine that aspect.

The whole episode commences with the issuance of G.O.Ms.No.144, Finance (W&M) Department, dated 7.6.2005, a copy of which is made available in the material papers filed by the respondents. It appears from the said G.O. that on 30.4.2005 another G.O.Ms.No.119, Finance (W&M) Department, dated 30.4.2005 imposed a ban on the transfers of the employees of the State. It is further stated in the G.O. that in view of the representations made by the employees associations and with a view to improve the ***administrative efficiency***, the government relaxed the ban subject to conditions enumerated therein, the relevant portion reads as follows :

> "Orders were issued in g.o.Ms.No.119, Finance (W&M) Department, dt.30.04.2005 continuing general ban on transfers. In view of the representations from Employee Associations and with a view to improve administrative efficiency, Government relaxes the ban subject to the following conditions :"

The 2nd respondent filed in the material papers a letter addressed by her to the 1st respondent wherein the proposals of various transfers pursuant to the above mentioned G.O. were made. The relevant portion of the said document reads as follows :

> "After completion of counseling, the following proposals are submitted to Government.

Sl. No.	Name & Designation	Grounds for transfer	Place of transfer proposed	Admissibilit TTA
I. Asst. Director (T)				
1.	Sri P.Brahmachari, Karimnagar	Medical grounds on his other	Head Office in the existing vacancy of Epigraphy Branch in exigency of service	No TTA

2. Sri N.Mallikarjuna Rao, Tirupati	Medical grounds (Neuro) on wife	Head Office in the existing vacancy of Museums Branch in exigency of service.	No TTA
3. Sri G.Venkatratnam, Directorate		Kurnool, consequent to above posting, he is only TA working in Directorate since 1985 (20 years) without any charge like antiquities etc.	TTA allowed
4. Sri S.Bangaraiah, Vijayawada	Spouse working	Rajahmundry in the existing vacancy.	No TTA

It can be seen from the above, of the four transfers, the first of the two transfers are made on “medical grounds” that too, not of the employee but in one case the mother and in other case the wife, and in the case of the 4th, it was made because the spouse of the employee is working at the station to which he was transferred and such considerations we are told by the respondents are relevant considerations for improving the efficiency of the administration. We do not propose to quarrel with the proposition, such are the ways of administration. But what puzzles is that in the said proposal made by the 2nd respondent, it was proposed to transfer the petitioner to Kurnool, but not to Kakinada. The vociferous stand of the respondent that there is a great administrative need to send the petitioner to Kakinada to examine and analyse 6500 palm leaf manuscripts which obviously the respondents believe are of “immense historical value”- which we strongly suspect in spite of the illiteracy of the subject matter with which we are expected to work is obviously an after thought. From Kurnool as it was originally proposed how the petitioner came to be transferred to Kakinada is a shrouded mystery.

The facts narrated above sufficiently demonstrate the total non application of mind on the part of the respondents and lack of candor in placing the facts before the court. We are of the opinion that the impugned order of transfer of the petitioner clearly not bonafide, to say the least.

We therefore allow the writ petition, and set aside the impugned order.

JUSTICE J.CHELAMESWAR

Dt : 23.02.2007
knk

JUSTICE M.VENKATESWARA REDDY